

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

CHRISTOPHER JOHN MEYERS,

Plaintiff,

V.

**WARDEN DANA RATLIFF-
WALKER, ET AL.,**

Defendants.

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

Case No. 7:22CV00137

OPINION AND ORDER

JUDGE JAMES P. JONES

Christopher John Meyers, Pro Se Plaintiff; Laura H. Cahill, Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL, Richmond, Virginia, for Defendants.

The plaintiff, Christopher John Meyers, a Virginia inmate proceeding pro se, filed this civil rights action under 42 U.S.C. § 1983. He has filed a “Motion for Summary Judgment,” ECF No. 25, against Defendants Keith Kelly and Dana Ratliffe-Walker, and the defendants have responded.¹ After review of the record, I

¹ Another defendant, Shanice Johnson, has filed a Motion to Dismiss, and Meyers has responded. In his response, Meyers presents additional facts and attaches documentation not included with the Complaint served on the defendant. Meyers is hereby advised that if he wants to have these new facts and documentation considered in support of his § 1983 claims, he must file an amended complaint that includes all such information. If he chooses to file an amended complaint, it must take the place of his initial filing and make a complete statement of his claims and the facts he offers in support. The court will not allow him to build his claims with piecemeal, partial statements of new facts and ideas in separate motions or responsive pleadings.

conclude that Meyers's summary judgment motion must be denied. I will also grant Meyers an opportunity to file an Amended Complaint.

Liberally construed, Meyers' Complaint alleges that the defendants have delayed or interfered with his access to noise cancelling headphones that he needs for medical reasons. Kelly and Ratliffe-Walker waived service of process on May 4, 2022, making their response to the complaint due on June 6, 2022. Over the next few weeks, they filed three motions seeking extensions of time, which the court granted). Ultimately, the court gave these defendants until August 29, 2022 to respond to the Complaint. On August 4, 2022, Kelly and Ratliffe-Walker filed a Motion to Dismiss.

A court should grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A genuine dispute exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "The party seeking summary judgment has the initial burden to show absence of evidence to support the nonmoving party's case." *Shaw v. Stroud*, 13 F.3d 791, 798 (4th Cir. 1994).

Meyers has not met this burden. He does not present any evidence showing that defendants cannot prove a defense to his allegations. Rather, he submits his sworn statement making new and conclusory assertions about the defendants'

administrative responsibilities and about their purported responses to his grievances and requests about the missing headphones.² Meyers also asserts that the defendants failed to file a timely response to his Complaint. He erroneously states that the court granted them only until July 6, 2022, to respond. Then, he argues that their failure to meet this purported deadline “can only be seen as evidence that [they] cannot defend their actions, or choose not to defend their actions.” Mot. Sum. J. 3, ECF No. 25. In fact, as reflected by the procedural background I have summarized, Kelly and Ratliffe-Walker filed a timely Motion to Dismiss on August 4, 2022. Thus, they have not failed to defend against Meyers’s claims, and he is not entitled to summary judgment.

For the reasons stated, it is **ORDERED** that Meyers’ Motion for Summary Judgment, ECF No. 25, is DENIED and Meyers is DIRECTED to file any amended complaint (*see* attached form) within thirty days from the entry of this Order.

ENTER: September 2, 2022

/s/ JAMES P. JONES

Senior United States District Judge

² Meyers is hereby advised that if he wants to have the new facts in his summary judgment motion considered as facts in support of his claims, he must file an amended complaint that includes them. As stated, an amended complaint must take the place of his initial filing as a *complete* statement of his claims and the facts he offers in support.

****AMENDED COMPLAINT****

Jones

District Judge
Assign. by Clerk's Ofc.

IN THE UNITED STATES DISTRICT COURT
for the WESTERN DISTRICT OF VIRGINIA

Sargent

Mag. Referral Judge
Assign. by Clerk's Ofc.

For use by Inmates filing a Complaint under

**CIVIL RIGHTS ACT, 42 U.S.C. §1983 or BIVENS v. SIX UNKNOWN NAMED AGENTS
OF FED. BUREAU OF NARCOTICS, 403 U.S.C. §388 (1971)**

Christopher John Meyers

1464351

Plaintiff full name

Inmate No.

v.

CIVIL ACTION NO.

7:22cv00137

(Assigned by Clerk's Office)

Defendant(s) full name(s)

The mailing address you provide at A: "where are you now?" is where the court will send mail to you

A. **Where are you now?** Facility and Mailing Address _____

B. Where did this action take place? _____

C. Have you begun an action in state or federal court dealing with the same facts involved in this complaint?

_____ Yes _____ No

If your answer to A is Yes, answer the following:

1. Court: _____

2. Case Number: _____

D. Have you filed any grievances regarding the facts of this complaint?

_____ Yes _____ No

1. If your answer is Yes, indicate the result:

2. If your answer is No, indicate why:

- E. Statement of Claim(s): State briefly the facts in this complaint. Describe what action(s) each defendant took in violation of your federal rights and include the relevant dates and places. **Do not give any legal arguments or cite any cases or statutes.** If necessary, you may attach additional page(s). Please write legibly.

Claim #1 – Supporting Facts – Briefly tell your story without citing cases or law:

Claim #2 – Supporting Facts – Briefly tell your story without citing cases or law:

- F. State what relief you seek from the Court. Make no legal arguments and cite no cases or statutes.

- G. If this case goes to trial do you request a trial by jury? Yes _____ No _____

- H. If I am released or transferred, I understand it is my responsibility to immediately notify the court in writing of any change of address **after** I have been released or transferred or my case may be dismissed.

SIGNATURE: _____ Date: _____

VERIFICATION:

I, _____, state that I am the plaintiff in this action, and I know the content of the above complaint; that it is true of my own knowledge, except as to those matters that are stated to be based on information and belief, and as to those matters, I believe them to be true. I further state that I believe the factual assertions are sufficient to support a claim of violation of constitutional rights. Further, I verify that I am aware of the provisions set forth in 28 U.S.C. §1915 that prohibit an inmate from filing a civil action or appeal, if the prisoner has, on three or more occasions, while incarcerated brought an action or appeal in federal court that is dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief may be granted, unless the prisoner is in imminent danger of serious physical injury. I understand that if this complaint is dismissed on any of the above grounds, I may be prohibited from filing any future actions without the pre-payment of the filing fees. I declare under penalty of perjury the foregoing to be true and correct.

SIGNATURE: _____ Date: _____

When submitting handwritten documents, leave enough space at the top, the bottom, and the sides. Those documents are scanned into the Court's database by hand, which is then the official record.

Please do not use tape or staples on documents.